

1 the next witness after Mr. Rigdon.

2 JUDGE SIPPEL: I understand, I
3 understand.

4 BY MR. CARROLL:

5 Q Have you prepared direct testimony
6 for this proceeding, sir?

7 A Yes.

8 MR. CARROLL: Your Honor, may I
9 approach?

10 JUDGE SIPPEL: Please do.

11 MR. CARROLL: I'm handing up
12 what's been marked as Commission -- Comcast
13 Exhibit 81. Now Your Honor, this replaces an
14 earlier version, pursuant to the agreement we
15 worked out between the two sides last night.

16 JUDGE SIPPEL: Okay, I understand.
17 There's a direct testimony that I have in this
18 binder, that is now no longer operable?

19 MR. CARROLL: Correct. We're
20 going with an agreed upon version of that.
21 I've kept the same number, but if anybody
22 thinks it would be better to put a, to mark it

1 81A, we could do that.

2 JUDGE SIPPEL: Well, I think what
3 we should do is just what Mary will do,
4 exchange this 81 for the 81 that's in the --
5 it hasn't quite got into the record officially
6 yet.

7 MR. CARROLL: Right.

8 JUDGE SIPPEL: But anyway, they'll
9 be an exchange of this. So we'll get rid of
10 the old and put the new in, and try and
11 destroy as much of the old as we can, so
12 there's no mix-up.

13 MR. CARROLL: Okay.

14 JUDGE SIPPEL: Thank you, thank
15 you. Comcast Exhibit 81. Why don't we mark
16 it, identify it, and move it right in?

17 (Whereupon, the document referred
18 to was marked for identification
19 as Comcast Exhibit 81.)

20 MR. CARROLL: Right.

21 JUDGE SIPPEL: I'm sorry, forgive
22 me.

1 MR. OSHINSKY: This is a
2 completely changed testimony from what we
3 have.

4 MR. CARROLL: It's not completely
5 changed. There was just a narrowing down.

6 JUDGE SIPPEL: I'm glad you
7 pointed it out. I guess why don't you do
8 that? Why don't you point out what's been
9 done with this for the record first, Mr.
10 Carroll, and then we'll move it in?

11 MR. CARROLL: Sure. There was
12 motion practice between the two sides over the
13 extent of testimony to be offered on direct,
14 relating to Mr. Rigdon's employment at
15 Charter. Remarkably, the two sides were able
16 to, and happily able to reach an agreement
17 last night, that precluded the need to
18 litigate that issue all the way through.

19 Consistent with that agreement,
20 we've kept in portions of what was previously
21 in there, related to Charter in Mr. Rigdon's
22 direct testimony, and deleted other portions

1 of the same, so as to avoid the issue and
2 allow us to proceed.

3 JUDGE SIPPEL: Now I take it, was
4 it the old paragraph eight that was changed?

5 MR. PHILLIPS: Most of eight was
6 taken out, and nine and ten was taken out,
7 Your Honor. But the first sentence of eight
8 remains.

9 MR. CARROLL: The first sentence
10 of eight remains.

11 MR. SCHMIDT: Okay, all right.
12 And Mr. Carroll, I think there's one other
13 change.

14 MR. CARROLL: Oh, we made one
15 other change to another, that's not related to
16 this issue. We took out one other sentence
17 too. But we haven't added anything in.

18 JUDGE SIPPEL: I see, all right.
19 That's marked as Exhibit 81. Any objection to
20 it being received? Then it's received as
21 Comcast Exhibit 81, and will be substituted
22 for the old Exhibit 81, which will be deleted

1 from the record, to the extent that it's in.

2 (Whereupon, the document referred
3 to as Comcast Exhibit 81 was
4 received in evidence.)

5 BY MR. CARROLL:

6 Q Thank you, Your Honor. And Mr.
7 Rigdon, can you confirm that this is a copy of
8 the direct testimony that you're offering in
9 this case?

10 A It is.

11 Q Okay, great. Now I'm just going
12 to go over and cover the issues in your direct
13 testimony in a general way for His Honor, and
14 then let the other side ask you their
15 questions. So let me ask you first: Prior to
16 coming to Comcast, did you have any dealings
17 with Tennis Channel in your career over the
18 years?

19 A I did.

20 Q And tell us about that? How did
21 it come to be that you had dealings with
22 Tennis Channel before coming to Comcast?

1 A In my position, running content at
2 my position at Charter, I had dealings with
3 the Tennis Channel related to carriage over a
4 long period of years.

5 Q Okay, and did you actually have
6 direct communications with people at Tennis
7 Channel? Were there people there that you
8 knew from that period of your career?

9 A Yes.

10 Q And who? Can you give some of the
11 names of people you dealt with?

12 A Sure. Patrick Wilson, Lee
13 Schlazer. At other periods, Nancy Pingitore.

14 Q Okay, and did -- and you had good
15 relations with the people at Tennis Channel?

16 A Yes.

17 Q Okay. Did you, in your position
18 at Charter, have occasion to make any decision
19 about carriage level for Tennis Channel on
20 Charter?

21 A I did.

22 JUDGE SIPPEL: As preliminary,

1 explain what Charter is.

2 BY MR. CARROLL:

3 Q Let's do that, Your Honor. Could
4 you explain -- His Honor's quite correct.
5 Could you -- I've assumed that, and I
6 shouldn't. Could you explain for the record
7 what Charter is? What is its business?

8 A Sure. Charter Communications is
9 the fourth largest cable operator in the
10 United States, Fortune 500 company, publicly
11 traded.

12 Q Okay, and where is it
13 headquartered?

14 A Headquartered in St. Louis,
15 Missouri.

16 Q And is that where you worked while
17 you were at Charter?

18 A It is.

19 Q And was Charter, while you were
20 there, was it a competitor of Comcast?

21 A No.

22 Q Who were its competitors while you

1 were at Charter?

2 A Its principle competitors were
3 DirecTV and Dish, and AT&T and Verizon.

4 Q Okay, and your position at Charter
5 was in the content acquisition area?

6 A That was one of my
7 responsibilities, yes.

8 Q Okay, and content acquisition
9 means what?

10 A It means managing the
11 relationships with programmers, with content
12 providers, negotiating affiliation agreements,
13 deciding where they're carried, things of that
14 nature.

15 Q And content provider, explain what
16 that means? What's a content provider?

17 A Cable networks, broadcast
18 networks, things of that nature.

19 Q Channels that I would see on TV?

20 A Channels, yes.

21 Q And was Tennis Channel one of
22 those providers, program providers that you

1 dealt with while you were at Charter?

2 A Yes, it was.

3 Q And in connection with your work
4 there, did you have occasion to consider
5 whether to carry Tennis Channel at Charter?

6 MR. PHILLIPS: Your Honor, if I
7 may object on this for just a second. I don't
8 have a problem with that question coming in,
9 but what we agreed upon, to resolve the motion
10 practice, was -- and this is because we didn't
11 get the discovery that was internal to
12 Charter. We had only public information
13 available that we were able to get from our
14 own.

15 We didn't have the opportunity to
16 get discovery, and that's one of the things
17 Mr. Carroll and I dispute on Charter. So the
18 way we resolved this was to allow the sentence
19 to come in, that says that Charter made the
20 decision, based on the judgment.

21 I think consistent with that,
22 going -- that to go into the details of that

1 decision would completely undo the agreement.

2 MR. CARROLL: I'm not. I was
3 going to get to --

4 (Simultaneous speaking.)

5 MR. PHILLIPS: That's fine.

6 JUDGE SIPPEL: You're just giving
7 me a heads up.

8 MR. PHILLIPS: I'm giving a heads
9 up.

10 JUDGE SIPPEL: Let's keep going.

11 MR. CARROLL: Not needed. It's
12 understood, and the witness understands.

13 JUDGE SIPPEL: Let's keep going.

14 BY MR. CARROLL:

15 Q Okay, good. I think the only
16 question was, did you have occasion to make a
17 decision about whether to carry Tennis Channel
18 while you were at Charter?

19 A I did.

20 Q And what decision did you make?

21 A To carry it in most markets on the
22 sports tier.

1 Q And what was the basis for that
2 decision?

3 A My independent business judgment,
4 understanding consumer demand and the value of
5 the Tennis Channel.

6 Q Was what Comcast was doing at the
7 time any part of your decision-making when you
8 were at Charter, about how to carry Tennis
9 Channel?

10 A No.

11 Q See, Mr. Phillips?

12 MR. PHILLIPS: Great.

13 MR. CARROLL: Now let me move
14 forward to your time at Comcast.

15 JUDGE SIPPEL: Just one question.

16 THE WITNESS: Yes sir.

17 JUDGE SIPPEL: Did you make that
18 decision independently, or in conjunction with
19 anybody else?

20 THE WITNESS: At Charter, I made
21 it in conjunction with other people.

22 JUDGE SIPPEL: And who were the

1 other people and what were their
2 responsibilities?

3 THE WITNESS: With field
4 operators, people who managed our systems in
5 the field, and with essentially the chief
6 marketing officer and his staff.

7 JUDGE SIPPEL: And the chief
8 marketing officer, is he the -- so is he the
9 highest level that had to go along with what
10 you were -- I take it, well, that went along
11 with your suggestions?

12 THE WITNESS: Yes, and the CEO in
13 a certain sense, yes.

14 JUDGE SIPPEL: The CEO signed off
15 on it?

16 THE WITNESS: Yes.

17 JUDGE SIPPEL: That's all. Thank
18 you.

19 BY MR. CARROLL:

20 Q Thank you, Your Honor. So let's
21 move forward to since you've come to Comcast.
22 Since coming to Comcast, have you, in your

1 three months, been getting up to speed on
2 things there?

3 A I have.

4 Q And how is that going?

5 A It's very busy.

6 Q And in connection with that, have
7 you had occasion to examine the relationship
8 between Comcast and Tennis Channel?

9 A I have, I have.

10 Q And how is that relationship?

11 A Well, I would say it's not on a
12 great footing. We're here in court today.

13 Q Okay. How about are you the
14 person who's now in charge of that
15 relationship and carriage levels relating to
16 that relationship?

17 A Yes. I'm one of the principle
18 decision-makers, yes.

19 Q And when you arrived at Comcast,
20 what did you learn about the carriage level
21 that Comcast had for Tennis Channel?

22 A That in most markets, Comcast was

1 carrying the Tennis Channel on the sports
2 tier.

3 Q Similar to where it was being
4 carried at Charter, when you were at Charter?

5 A Correct.

6 Q Have you had occasion to learn
7 about a proposal that Tennis Channel has made
8 to Comcast, seeking greater distribution than
9 the sports tier?

10 A I have.

11 Q And how have you come to learn
12 about that?

13 A I've been briefed by my team on
14 the relationship, and through that process,
15 learned of that proposal.

16 Q Okay, and have you, in your
17 current job now, had occasion to consider and
18 evaluate that proposal, and come to a decision
19 about where the Tennis Channel should be
20 carried?

21 A I have.

22 Q And tell us about that.

1 A Upon evaluating the proposal, my
2 decision is that, you know, there's no
3 compelling business rationale for melting the
4 Tennis Channel from the sports tier, to
5 provide it with broader distribution. There's
6 no compelling business rationale to do it. So
7 I think where we're carrying it today is
8 appropriate.

9 Q We have another term for the
10 glossary maybe. Melting. Can you explain to
11 all of us what that term "melting" means?

12 A Yes. So it would be moving the
13 network out of the sports tier to a more
14 highly penetrated tier, so that it would be in
15 front of more subscribers than it is today.

16 Q Okay, and why do you use the term
17 "melt"? Is that an industry term that's used?

18 A Yes, sorry. It's an industry
19 term.

20 Q Okay, and why, how did the
21 industry come up with that term? Why is melt
22 used for that?

1 A You know, I don't know the exact
2 derivation of the term, but the notion is you
3 melt it from a higher tier, and you melt it
4 down to a lower tier, which is where there are
5 more subscribers. If you think of it as sort
6 of a pyramid. Less subscribers at the top of
7 the pyramid; more subscribers at the bottom of
8 the pyramid.

9 Q Okay, and now wouldn't Comcast,
10 based on your evaluation, wouldn't Comcast
11 benefit from melting Tennis Channel from a
12 sports tier to broader distribution?

13 A No. Actually my assessment is
14 that there was no consumer demand to have the
15 Tennis Channel carried on a more highly
16 penetrated tier. So actually, by providing
17 that broader distribution, it would really
18 only expose Comcast to incremental expense,
19 and might take value out of the sports tier.

20 Q Okay. Let's take each piece of
21 that. How would it expose Comcast to
22 incremental expense? What do you mean by

1 that?

2 A By putting the network in front of
3 more subscribers, giving more subscribers
4 access to the network, Comcast license fees
5 would increase substantially. Depending on
6 how we carried the network, according to that
7 2009 proposal, it would be up to [REDACTED] million
8 of incremental expense.

9 MR. PHILLIPS: Excuse me, Your
10 Honor.

11 JUDGE SIPPEL: Good point. You
12 can't use numbers in an open --

13 THE WITNESS: Sorry.

14 JUDGE SIPPEL: We're in an open
15 proceeding right now. Thank you. I think
16 just to characterize what the expenses are.

17 THE WITNESS: Sure. More
18 subscribers means more fees, which means more
19 expense.

20 BY MR. CARROLL:

21 Q Well, aren't there benefits --
22 wouldn't there be benefits to you that might

1 offset the expense associated with more
2 subscribers?

3 A Well, based on my experience at
4 Charter and based on my evaluation of the
5 situation at Comcast, I don't think so. The
6 typical benefits that you would look for would
7 be the ability to attract incrementals, more
8 subscribers, or to retain more subscribers.

9 Q You say "attract more
10 subscribers." Do you mean new subscribers
11 that are not subscribers to you now?

12 A Correct, new subscribers to
13 Comcast.

14 Q Okay, and why wouldn't that
15 happen?

16 A I saw no evidence that that would
17 happen. Typically, you find that out from the
18 field, from customers calling in requesting
19 the channel, or requesting that it be carried
20 on a more highly penetrated tier. I saw no
21 evidence of that, which was consistent with my
22 experience at Charter.

1 Q Under the sports tier arrangement
2 you already had, could subscribers if they
3 wanted -- strike subscribers. Could people in
4 the country, if they wanted to see Tennis
5 Channel on Comcast, could they do that
6 already?

7 A Sure.

8 Q How would that happen?

9 A They would just subscribe to the
10 sports tier, and they would have access to the
11 Tennis Channel.

12 Q And how much would subscribing to
13 the sports tier, the current arrangement,
14 cost? I think that's public information.
15 That would be public information.

16 A You can certainly find it out,
17 yes.

18 Q Okay. So you can answer that with
19 a number. Roughly how much would it cost a
20 customer, if they wanted to subscribe to the
21 sports tier right now?

22 A You know, there are probably a

1 variety of offers out in the marketplace. But
2 you know, probably in the range of \$5 a month.

3 Q Okay, and have you looked at --
4 well, let me get to that side in a second. I
5 think another piece that you said was
6 retaining subscribers. In addition to the
7 question of whether you would gain any
8 subscribers, I think another part of your
9 answer was retaining subscribers. What do you
10 mean by that?

11 A So the question is by providing
12 that programming to consumers, does that
13 provide them with such satisfaction that it
14 prevents them from leaving Comcast to go to
15 one of our competitors.

16 Q Now have you -- has that been an
17 issue for you since you've been at Comcast?
18 Namely, have you seen any evidence that you're
19 losing subscribers because you don't have
20 Tennis Channel?

21 A No. I mean, first of all, Comcast
22 does have Tennis Channel on the sports tier,

1 and there's no evidence that subscribers are
2 leaving Comcast because it's not carried on a
3 more highly penetrated tier.

4 Q Now for -- you answered this
5 question for Charter. Let me ask you for
6 Comcast. Who are Comcast's biggest
7 competitors for subscribers these days?

8 A It's the same competitors. Dish,
9 Direct, AT&T and Verizon.

10 Q Okay. Do those competitors at
11 Comcast, do they carry, do they offer Tennis
12 Channel these days?

13 A They do.

14 Q Have you worried about the
15 possibility that you might lose some of your
16 subscribers to your competition, because they
17 go to your competition in order to get Tennis
18 Channel?

19 A No, I haven't worried about that
20 at Comcast, and I didn't worry about it at
21 Charter.

22 Q Well, let's limit it to Comcast.

1 With respect to Comcast, why is that not a
2 concern for you?

3 A There's simply no evidence of
4 that. There's no evidence from the field. We
5 talk to our customers every day. We get
6 information about why our customers leave us,
7 and this has not been flagged as one of the
8 issues that is driving customers to leave us.

9 Q And at your competition, say
10 DirectTV and Dish, do people get Tennis
11 Channel, in whatever form they get a
12 distribution, is there a price associated of
13 some sort?

14 A Yes, there is.

15 Q So they don't get it for free, in
16 other words, on DirectTV and Dish, the
17 competition?

18 A No.

19 JUDGE SIPPEL: Can I ask one
20 question here?

21 MR. CARROLL: Please, Your Honor.

22 JUDGE SIPPEL: If a customer pays

1 the \$5, in addition to what he's already
2 paying, does he get -- if he does get the
3 Tennis Channel, does he also get the other
4 programming that's up on that sports tier, or
5 is it just the one feature, just the Tennis
6 Channel feature?

7 THE WITNESS: No. The subscriber
8 would get other programming as well. You
9 know, depending on the market, you know,
10 anywhere from 10 to 15 additional networks.

11 JUDGE SIPPEL: Well, I take it
12 then, you sign onto whatever that third tier
13 channel, third tier is offering; is that
14 correct?

15 THE WITNESS: That's correct.
16 It's a bundle of networks.

17 JUDGE SIPPEL: Bundle?

18 THE WITNESS: Yes, that's correct.

19 MR. CARROLL: Can you give His
20 Honor a sense of the other types of networks
21 that would be part of that bundle, the sports
22 tier?

1 JUDGE SIPPEL: Thank you.

2 THE WITNESS: Sure. ESPN News,
3 ESPN Classic, Fox Soccer, Fox covered sports.
4 In some markets the Big Ten Network, things of
5 that nature.

6 JUDGE SIPPEL: So it's not just
7 the Tennis Channel?

8 THE WITNESS: That's correct.

9 BY MR. CARROLL:

10 Q And there's something called Red
11 Zone. Have you heard of Red Zone?

12 A Yes.

13 Q Is Red Zone offered as part of
14 your sports tier?

15 A Comcast does offer Red Zone,
16 that's correct.

17 Q Okay. There's no kind of Red Zone
18 that's been created yet for Tennis Channel
19 that you're aware of?

20 A No.

21 Q Okay. Now there's been a term
22 discussed previously this week, ad avails.

1 Could you explain what ad avails are?

2 A As part of an affiliation
3 agreement, as part of getting --

4 Q First of all, what's -- let me
5 interrupt. What's that short for? That short
6 for that term "ad avails." What does it stand
7 for?

8 A Advertising availability.

9 Q Advertising availability, and
10 could you explain to all of us and to His
11 Honor, what is an ad avail?

12 A So when we negotiate with networks
13 for the rights to distribute their networks,
14 part of that negotiation is to get advertising
15 availability.

16 So typically in an hour of
17 programming, there will be around 16 minutes
18 of advertising units, of which the cable
19 operator typically gets access to two. Then
20 the cable operator has its own ad sales force,
21 which sells those units, primarily to local
22 advertisers.

1 JUDGE SIPPEL: Can you run that by
2 me one more time? I know what you mean by the
3 ads availability. But walk me through how
4 that negotiation works.

5 THE WITNESS: So when you're
6 watching TV, in an hour of television--

7 JUDGE SIPPEL: Yes.

8 THE WITNESS: You'll see roughly
9 16 minutes of advertisements, of which two are
10 actually sold by the local cable operators.

11 JUDGE SIPPEL: Two minutes?

12 THE WITNESS: Two minutes, as
13 opposed to by the network's advertising sales
14 force. So Tennis Channel has its own sales
15 force, and Comcast Cable has its own sales
16 force, and they split the advertising
17 inventory.

18 JUDGE SIPPEL: But it's on that
19 basis, two minutes to 14 minutes?

20 THE WITNESS: That's a fairly
21 standard, yes.

22 JUDGE SIPPEL: Interesting. Now